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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

RUBY C.,

Petitioner,

v.

THE SUPERIOR COURT OF STANISLAUS  
COUNTY,

Respondent,

STANISLAUS COUNTY COMMUNITY  
SERVICES AGENCY,

Real Party In Interest.

F045687

(Super. Ct. No. JUV 506888)

**OPINION**

**THE COURT\***

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Donald E. Shaver, Judge.

Grisez, Orenstein & Hertle and Nadine Salim, for Petitioner.

No appearance for Respondent.

Michael H. Krausnick, County Counsel, and Linda S. Macy, Deputy County Counsel, for Real Party In Interest.

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\*Before Harris, Acting P.J., Cornell, J., and Dawson, J.

Petitioner seeks an extraordinary writ petition (Cal. Rules of Court, rule 39.1B) to vacate the orders of the juvenile court terminating reunification services and setting a Welfare and Institutions Code section 366.26 hearing.<sup>1</sup> We will deny the petition.

### **STATEMENT OF THE CASE AND FACTS**

The instant writ petition arises from the juvenile court's termination of reunification services at the contested six-month review hearing in the case of petitioner's two-year-old daughter J. Petitioner and her husband, Paul,<sup>2</sup> who is also J.'s father, were offered a variety of reunification services, each of which petitioner analyzes in detail in arguing juvenile court error. However, this case clearly turns on one particular requirement of petitioner's case plan—i.e., completion of a substance abuse assessment and recommended treatment. Therefore, we will focus our factual presentation and discussion accordingly.

Petitioner and Paul are admitted marijuana users with a significant history of domestic violence and transience. In November 2002, while living in Mariposa County, they were engaged in a physical fight when Paul accidentally struck then seven-month-old J. Child Protective Services (CPS) investigated the incident but did not remove J. because Paul and petitioner stated they were moving to Texas and would seek counseling. Five months later, CPS in Mariposa County substantiated a referral that petitioner and Paul had 15 domestic violence disputes in 15 months involving the Mariposa County Sheriff's office. The couple agreed to accept voluntary services.

However, instead of participating in services, petitioner and Paul moved to Tuolumne County where CPS received a referral in July 2003 that Paul was smoking

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

<sup>2</sup> Paul also filed an extraordinary writ petition from the instant dependency proceedings in this court's case No. F045675.

marijuana with a ten-year-old neighbor boy. Paul told the social worker that the 10 year old supplied the marijuana. The family was offered but refused voluntary services.

The instant dependency proceedings were initiated in August 2003 when then two-year-old J. was knocked to the ground during a physical fight between petitioner and Paul. The Tuolumne County Department of Social Services took J. into protective custody and filed a dependency petition on her behalf, alleging petitioner and Paul's marijuana use and domestic violence placed J. at risk of physical and emotional harm. (§ 300, subds. (b) & (c).) On October 14, 2003, both parents appeared before the Tuolumne County Juvenile Court and submitted on the petition. Sometime thereafter, they moved to Stanislaus County. Their case was transferred to the Stanislaus County Juvenile Court and the matter was set for disposition.

In its dispositional report, the Stanislaus County Community Services Agency (agency) noted that petitioner was issued a "Therapeutic Cannabis Recommendation" by her physician on October 20, 2003, authorizing the medicinal use of marijuana for post-traumatic stress disorder. The recommendation was issued through Compassionate Caregivers in Oakland, California and expired on January 20, 2004. The agency further reported that both parents were referred for domestic violence and substance abuse assessments, parenting classes, and marital/family counseling.

The dispositional hearing was continued several times and conducted on January 12, 2004. The juvenile court declared J. a dependent of the court and ordered reunification services for both parents to include parenting classes, domestic violence assessments and recommended treatment, substance abuse assessments and recommended treatment, and random drug testing. Petitioner's service plan differed only in the area of random drug testing. According to the minute order from the dispositional hearing, petitioner was not to be tested for marijuana. The court set the six-month review hearing for May 6, 2004.

During the months following disposition, petitioner and Paul were homeless and transient within Stanislaus County. They also separated and reunited many times between January and May 2004. On a monthly basis, the caseworker offered them a referral to a clean and sober living environment and explained that by going to such a structured facility, it would be easier to place J. with them for an extended visit. Petitioner and Paul repeatedly declined the offers.

On January 29, 2004, petitioner completed a substance abuse assessment. Petitioner presented her medicinal marijuana card to the substance abuse counselor and reported that she did not use any other drugs. Consequently, the counselor did not recommend outpatient services but recommended that petitioner continue to drug screen and that she participate in outpatient drug treatment if she tested positive for drugs. In early February 2004, during one of the couple's separations, Paul reported to the caseworker that petitioner was using "crank." The caseworker asked petitioner to drug test, which she did. The results were positive for marijuana and methamphetamine. Petitioner denied using methamphetamine. The caseworker also noted that petitioner's marijuana authorization had expired and had not been renewed.

Paul was even less compliant with the substance abuse assessment requirement of his case plan. He missed five substance abuse assessment appointments from November 2003 to April 2004 and waited until May 26, 2004, to complete a substance abuse assessment. Paul was asked to drug test once. He did and it was positive for marijuana.

In its six-month status review dated May 6, 2004, the agency recommended the court terminate reunification services for both parents because they failed to regularly participate in and make substantive progress in their case plans. With regard to petitioner, the agency reported it referred her to West Modesto Regional Services for outpatient drug services after she tested positive for methamphetamine. As of the date of the report, she had not made an appointment.

On May 27, 2004, the court convened the contested six-month review hearing. The caseworker testified that petitioner and Paul were participating in their parenting and domestic violence classes. However, their transience made it difficult to contact them for drug testing.

Under cross-examination by petitioner's counsel, the caseworker acknowledged that petitioner completed a second substance abuse assessment. However, the caseworker had only been apprised of it that day. Apparently, the caseworker was shown a document and asked what recommendation resulted from the second substance abuse assessment. It is not clear from the appellate record what the caseworker was asked to review because it is not specifically identified nor made part of the record. However, she responded: "There doesn't seem to be a recommendation. In reading it, it's unclear to me because there was—the counselor who completed that normally contacts me and there was no discussion, so I haven't—I don't understand the recommendation." She further testified: "Talking to [the substance abuse counselor] who did [petitioner's] first assessment, had [petitioner] submitted a positive drug test she would have recommended drug counseling. And after talking to her, ... I referred [petitioner] to a clean and sober living environment to do another assessment through West Modesto Regional Center."

Under county counsel's examination, the caseworker testified that Paul informed the prior caseworker that he separated from petitioner because she was "actively using crank and that he didn't want to be with her anymore." After the caseworker's testimony, the case was continued in progress until June 1, 2004.

On June 1, 2004, the court heard the testimony of Paul and petitioner. Paul testified that he was employed and that he and petitioner were living in a house and sharing the rent with a friend. He completed a substance abuse assessment on May 26, 2004, but did not have the final report to enter into evidence. However, he testified that the substance abuse counselor recommended he complete an intensive outpatient drug treatment program.

Petitioner denied using methamphetamine in February 2004. She also denied using any drug other than marijuana. She explained that, at the time she tested positive for methamphetamine, she was living in a house with people who smoked methamphetamine and snorted it from the spoons and dishes. She believed she ingested enough smoke in the ambient air and from washing their dishes and spoons to produce a positive drug result.

Petitioner conceded her marijuana authorization card expired and claimed she stopped using marijuana as a result. However, she blamed the social worker for not transporting her to Oakland to renew it. Like Paul, she completed a substance abuse assessment on May 26, 2004, the day before the hearing. She gave a variety of reasons for not completing the assessment sooner. She was busy working on her parenting classes, she was afraid she would be referred for inpatient drug treatment and would not be able to get a job and she did not want to deprive a real drug abuser an opportunity for treatment.

Petitioner further testified that a different counselor performed the second substance abuse assessment and that the counselor asked her the same questions she was asked the first time. According to petitioner, the counselor gave her a letter stating specifically that she “told him about the dirty meth test and the dirty marijuana test and the medicinal marijuana script ....” and that the counselor did not make any recommendations with regard to drug treatment or services. Her attorney asked, “If it was determined that the evaluation was based on incomplete information and then later you were recommended to a substance abuse program, would you be willing to do that?” She stated that she would. The counselor’s report was not entered into evidence and petitioner’s representation that she disclosed her positive drug screen for methamphetamine and that the counselor did not recommend any drug treatment went unchallenged.

During argument, petitioner's counsel argued that petitioner substantially complied with her court-ordered services and could complete them if given another six months of services. With regard to the substance abuse assessments, counsel stated simply that petitioner completed both assessments as required. She did not, however, argue that petitioner was not recommended for drug treatment as a result of the second substance abuse assessment. Instead, she argued that, if granted continued services, petitioner could complete a three-month inpatient drug treatment program and most of the four-month after care program. County counsel's argument, with regard to the second substance abuse assessment, was that petitioner unnecessarily delayed in completing it.

At the conclusion of the hearing, the court found it would be detrimental to return J. to petitioner and Paul's custody. The court further found petitioner and Paul were provided reasonable services and, though they made limited progress, they did not regularly participate in or make substantive progress in their court-ordered treatment programs. In making its findings, the court commented that Paul's marijuana habit was a significant factor in destabilizing his life and that he allowed six months to lapse without making any real progress. As to petitioner, the court found her testimony unbelievable and concluded she was in serious denial regarding her drug abuse. Further, the court stated that petitioner's positive screen for methamphetamine and Paul's report that she was using methamphetamine caused the court to conclude she was disingenuous with the second substance abuse counselor. As to both parents, the court found there was not a substantial likelihood J. would be returned to their custody if services were continued for another six months. Accordingly, the court terminated reunification services and set the matter for a section 366.26 hearing. This petition ensued.

## **DISCUSSION**

### ***The juvenile court properly terminated reunification services.***

At the six-month review hearing, the juvenile court may terminate reunification services and schedule a permanency planning hearing where the child, on the date of

removal, was under the age of three years and the court further finds, by clear and convincing evidence, the parent failed to participate regularly and make substantive progress in the court-ordered plan. (§ 366.21, subd. (e).) If, however, the court finds there is a substantial probability that such a child may be returned to parental custody within six months or that reasonable services were not provided, the court must continue the case to the 12-month permanency hearing. (*Ibid.*)

Services are reasonable if the supervising agency identified the family's problems, offered services targeting those problems, maintained reasonable contact with the offending parent(s), and made reasonable efforts to assist in areas where compliance was difficult. (*In re Riva M.* (1991) 235 Cal.App.3d 403, 414.) Further, in order to find a substantial probability of return, the court must find all of the following:

“(A) That the parent ... has consistently and regularly contacted and visited with the child.

“(B) That the parent ... has made significant progress in resolving problems that led to the child's removal from the home.

“(C) The parent ... has demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs.” (§ 366.21, subd. (g)(1).)

We review the juvenile court's order terminating reunification services for substantial evidence, resolving all conflicts in favor of the court and indulging in all legitimate inferences to uphold the court's finding. (*In re Brison C.* (2000) 81 Cal.App.4th 1373, 1378-1379.)

Petitioner argues she completed two substance abuse assessments and neither resulted in a recommendation she participate in drug treatment. Further, she claims, she stopped smoking marijuana when her authorization card expired. Since she was otherwise participating in her court-ordered services, she contends, the court erred in



finding she failed to regularly participate in and make substantive progress in her court-ordered plan. We disagree.

It is unclear from the appellate record what recommendation, if any, resulted from petitioner's second substance abuse assessment since no report was entered into evidence. For reasons unclear from the record, county counsel did not produce a copy of the assessment or challenge petitioner's testimony that she divulged her positive drug screen for methamphetamine to the substance abuse counselor and that she was not referred for drug treatment. However, given evidence petitioner was using methamphetamine and her steadfast denial that she used methamphetamine despite the positive drug test result, we can infer, as the juvenile court did, not only that she used methamphetamine but that a counselor, knowing that, would have referred her for some type of drug treatment. A further reasonable inference from the evidence is that petitioner delayed completing the second substance abuse assessment to avoid addressing her real drug problem. Accordingly, we conclude, the juvenile court properly found that, despite any other progress petitioner made in her court-ordered services, she failed to regularly participate in services designed to evaluate and treat her drug use and she failed to make substantive progress in addressing her drug problem.

Petitioner further argues the caseworker failed to provide her reasonable services by drug testing her in violation of the court's order. Conversely, she argues the caseworker should have instituted some method of drug testing. She contends the caseworker's inability to contact her for drug testing should not be used against her since the caseworker had alternative means available such as testing her following visitation or providing her a calling card. She also argues the caseworker refused to help her renew her marijuana authorization card, ignored her homelessness, failed to remain in regular contact, and was biased against petitioner. We find no merit to her claims.

The agency honored petitioner's authorization to use marijuana and the court's order not to test her for it. She was not drug tested until the caseworker had information

that she was using methamphetamine. The caseworker explained during her testimony that she did not drug test petitioner following visitation because the drug-testing laboratory was often closed during that time of the day and because the test would not be random. In any case, the juvenile court expressly stated it did not use the failure to drug test as a negative factor in assessing petitioner's progress. Further, it was petitioner's responsibility to renew her marijuana authorization card, not the agency's responsibility. Moreover, it is undisputed that the caseworker repeatedly urged petitioner and Paul to seek housing in the clean and sober facility. Finally, there is no evidence that the caseworker was not in regular contact with petitioner or that she was biased against her.

Finally, petitioner argues the evidence supports a substantial probability of return because she regularly visited J., she made substantial progress in her case plan and she could complete her plan within another six months. We conclude petitioner's failure to complete her substance abuse assessment until the day before the six-month review hearing and her avoidance of drug treatment provides sufficient evidence there was not a substantial probability J. could be returned to her custody within another six months. We find no error in the juvenile court's order terminating reunification services.

#### **DISPOSITION**

The petition for extraordinary writ is denied. This opinion is final forthwith as to this court.